

Jon A. Tostrud (SBN 199502)
TOSTRUD LAW GROUP, P.C.
1925 Century Park East, Suite 2100
Los Angeles, CA 90067
Telephone: (310) 278-2600
Facsimile (310) 278-2640
Email: jtostrud@tostrudlaw.com

[Additional Counsel on Signature Page]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

MELVYN KLEIN, Derivatively on) CASE NO.: 18-4445
Behalf of Nominal Defendant)
WageWorks, Inc.,) **VERIFIED SHAREHOLDER**
Plaintiff,) **DERIVATIVE COMPLAINT**

JOSEPH L. JACKSON, THOMAS A.)
BEVILACQUA, BRUCE G.)
BODAKEN, MARIANN)
BYERWALTER, JEROME D.)
GRAMAGLIA, JOHN W. LARSON,)
ROBERT L. METZGER, AND)
EDWARD C. NAFUS,)

v.)

Defendants,)

JURY TRIAL DEMANDED

WAGEWORKS, INC., a Delaware)
Corporation,)

Nominal Defendant.)

Plaintiff Melvyn Klein (“Plaintiff”), on behalf of WageWorks, Inc.
 (“WageWorks” or the “Company”), derivatively, alleges the following based upon

1 personal knowledge as to himself and his own acts, and upon information and belief
2 and investigation of counsel as to all other matters. That investigation included,
3 among other things, a thorough review and analysis of public documents, court
4 filings, press releases and news articles concerning WageWorks, and the other facts
5 as set forth herein:

6 **NATURE OF THE ACTION**

7 1. This is a shareholder derivative action brought on behalf of and for the
8 benefit of WageWorks, against certain of its officers and/or directors named as
9 defendants herein seeking to remedy their breaches of fiduciary duties.
10 Defendants' actions have caused, and will continue to cause, substantial financial
11 harm and reputational damage to WageWorks.

12 **JURISDICTION AND VENUE**

13 2. This Court also has jurisdiction over the claims asserted herein under
14 28 U.S.C. § 1331 because Plaintiff and Defendants have diverse citizenship.

15 3. The Court has jurisdiction over each defendant because each
16 defendant is either a corporation that does sufficient business in California or is an
17 individual who has sufficient minimum contacts with California so as to render the
18 exercise of jurisdiction by the California courts permissible under traditional
19 notions of fair play and substantial justice.

20 4. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
21 one or more of the Defendants either resides in or maintains executive offices in
22 this District, including Nominal Defendant WageWorks, a substantial portion of the
23 transactions and wrongs complained of herein – including Defendants' primary
24 participation in the wrongful acts detailed herein and aiding and abetting in
25 violations of fiduciary duties owed to WageWorks – occurred in this District, and
26 Defendants have received substantial compensation in this District by doing
27 business here and engaging in numerous activities that had an effect in this District.

5. In connection with the acts and conduct alleged herein, Defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the United States mails, interstate telephone communications, and the facilities of the national securities exchanges and markets.

PARTIES

Plaintiff

6. *Plaintiff Melvyn Klein* is a citizen of the State of New York and a current WageWorks shareholder during the relevant period. Plaintiff will continue to hold WageWorks shares throughout the pendency of this action. Plaintiff will fairly and adequately represent the interests of the shareholders in enforcing the rights of the corporation.

Nominal Defendant

7. *Nominal Defendant WageWorks* is incorporated in Delaware and maintains its principle office at 1100 Park Place, 4th Floor, San Mateo, California. The Company purports to be a leader in administering Consumer-Directed Benefits (“CDBs”), which empower employees to save money on taxes and provide corporate tax advantages for employers. The Company is dedicated to administering CDBs, including pre-tax spending accounts, such as Health Savings Accounts, or HSAs, health and dependent care Flexible Spending Accounts, or FSAs, Health Reimbursement Arrangements, or HRAs, as well as Commuter Benefit Services, including transit and parking programs, wellness programs, Consolidated Omnibus Budget Reconciliation Act, or COBRA, and other employee benefits. The Company’s CDB programs assist employees and their families in saving money by using pre-tax dollars to pay for certain expenses related to their healthcare, dependent care and commuter expenses. Employers financially benefit from our programs through reduced payroll taxes. Under the Company’s FSA,

HSA and commuter programs, employee participants contribute funds from their pre-tax income to pay for qualified out-of-pocket healthcare expenses not fully covered by insurance, such as co-pays, deductibles and over-the-counter medical products or for commuting costs. Defendant WageWorks is a citizen of California.

Director Defendants

8. ***Defendant Joseph L. Jackson*** (“Jackson”) is the Chief Executive Officer (“CEO”) and the Executive Chairman of the Board since April 2018. Defendant Jackson is a citizen of California.

9. ***Defendant Thomas A. Bevilacqua*** (“Bevilacqua”) has served as a member of the Company’s Board since November 2009, as a member of the Company’s Compensation Committee since February 2010 and as a member of the Company’s Nominating and Corporate Governance Committee since February 2011. Defendant Bevilacqua is a citizen of California.

10. ***Defendant Bruce G. Bodaken*** (“Bodaken”) has served as a member of the Company’s Board since September 2005, as Chairman of the Company’s Audit Committee from May 2009 to November 2014 and as a member of the Company’s Audit Committee since February 2006. Defendant Bodaken is a citizen of California.

11. ***Defendant Mariann Byerwalter*** (“Byerwalter”) has served as a member of the Company’s Board since May 2010, as Chairperson of the Company’s Audit Committee from November 2014 to February 2017, and as a member of the Company’s Audit Committee since May 2010. Defendant Byerwalter is a citizen of California.

12. ***Defendant Jerome D. Gramaglia*** (“Gramaglia”) has served as a member of the Company’s Board since November 2002, as a member of the Company’s Compensation Committee since October 2003, as the Chairman of the Company’s Compensation Committee since February 2006 and as a member of the

Company's Nominating and Governance Committee since August 2014. Defendant Gramaglia is a citizen of California.

13. **Defendant John W. Larson** ("Larson") has served as a member of the Company's Board since June 2000, as Chairman of the Company's Board from July 2006 to December 2016, as lead Director since December 2016, as Chairman of the Company's Nominating and Corporate Governance Committee since February 2006, and as a member of the Company's Compensation Committee since April 2017. Defendant Larson is a citizen of California.

14. **Defendant Robert L. Metzger** ("Metzger") has served as a member of the Company's Audit Committee and the Board since February 2016, as a member of the Company's Audit Committee since February 2016 and as a Chairman of the Company's Audit Committee since February 2017. Defendant Metzger is a citizen of Illinois.

15. **Defendant Edgar O. Montes** ("Montes") was named President and Chief Executive Officer and a member of the Board in April 2018. Montes had previously served as President since December 2016 and Chief Operating Officer (COO) since December 2012. Prior to his appointment as COO, Montes held the position of Senior Vice President, Service Delivery Operations since March 2012, and also held the position of Vice President, Operations from November 2006 until March 2007. Defendant Montes is a citizen of California.

16. Defendants Jackson, Bevilacqua, Bodaken, Byerwalter, Gramaglia, Larson, Metzger and Montes are collectively referred to herein as "Defendants".

Audit Committee Charter

17. Pursuant to the Company's Audit Committee Charter, the purpose of the Audit Committee is to assist the Board with oversight of the Company's accounting and financial reporting processes and the audit of the Company's financial statements.

18. The Audit Committee Charter states in relevant part:

The purpose of the Audit Committee of the Board of Directors (the “Board”) of WageWorks, Inc. (the “Company”) shall be to:

- Provide oversight of the Company’s accounting and financial reporting processes and the audit of the Company’s financial statements;
- Assist the Board in oversight of (i) the integrity of the Company’s financial statements, (ii) the Company’s compliance with legal and regulatory requirements, (iii) the independent auditor’s qualifications, independence and performance, (iv) the organization and performance of the Company’s internal audit function, (v) the Company’s internal accounting and financial controls, and (vi) the Company’s policies with respect to risk assessment and risk management; and
- Provide to the Board such information and materials as it may deem necessary to make the Board aware of significant financial matters that require the attention of the Board.

In furtherance of these purposes, the Audit Committee will undertake those specific duties and responsibilities listed below and such other duties as the Board may from time to time prescribe.

The Audit Committee’s responsibility is one of oversight. The members of the Audit Committee are not employees of the Company, and they do not perform, or represent that they perform, the functions of management or the independent auditors. The Audit Committee relies on the expertise and knowledge of management, the internal auditor and the independent registered accounting firm in carrying out its oversight responsibilities. The management of the Company is responsible for preparing accurate and

complete financial statements in accordance with generally accepted accounting principles and for establishing and maintaining appropriate accounting principles and financial reporting policies and satisfactory internal control over financial reporting. The independent registered accounting firm is responsible for auditing the Company's annual consolidated financial statements and the effectiveness of the Company's internal control over financial reporting and reviewing the Company's quarterly financial statements. It is not the responsibility of the Audit Committee to prepare or certify the Company's financial statements or guarantee the audits or reports of the independent auditors, nor is it the duty of the Audit Committee to certify that the independent auditor is "independent" under applicable rules. These are the fundamental responsibilities of management and the independent auditors.

* * *

RESPONSIBILITIES AND DUTIES

The responsibilities and duties of the Audit Committee shall include:

Review Procedures

- Reviewing the reports of management, internal audit and the independent auditors concerning the design, implementation and maintenance of the Company's internal controls and procedures for financial reporting, including meeting periodically with the Company's management, internal audit and the independent auditors to review their assessment of the adequacy of such controls and to review before release the disclosure regarding such system of internal controls required under SEC rules to be contained in the Company's periodic filings and the attestations or reports by the independent auditors relating to such disclosure;

- 1 • Reviewing and providing oversight of the external
2 audit by (i) reviewing the independent auditors’
3 proposed audit scope and approach; (ii) discussing
4 with the Company’s independent auditors the
5 financial statements and audit findings, including
6 any significant adjustments, management judgments
7 and accounting estimates, significant new
8 accounting policies, disagreements with
9 management and any other required
10 communications described in applicable accounting
11 standards; (iii) reviewing with the independent
12 auditors the Company’s critical accounting policies
13 and practices, alternative treatments of financial
14 information within generally accepted accounting
15 principles that have been discussed with
16 management and the treatment recommended by the
17 independent auditors, and other material written
18 communications between the independent auditors
19 and management; and (iv) reviewing reports
20 submitted to the audit committee by the independent
21 auditors in accordance with applicable SEC
22 requirements;
23 • Reviewing and approving the annual internal audit
24 project plan and any proposed changes and
25 reviewing periodic reports summarizing results of
26 the internal audit projects;
27 • Reviewing and discussing with management and the
28 independent auditors the annual audited financial
statements and quarterly unaudited financial
statements, including the Company’s disclosures
under “Management’s Discussion and Analysis of
Financial Condition and Results of Operations,”
prior to filing the Company’s Annual Report on
Form 10-K and Quarterly Reports on Form 10-Q,
respectively, with the SEC;
• Recommending to the Board, if deemed appropriate,
that the audited financial statements be included in
the Company’s Annual Report on Form 10-K, in

1 accordance with the rules and regulations of the
2 SEC;

- 3 • Directing the Company's independent auditors to
4 review before filing with the SEC the Company's
5 interim financial statements included in Quarterly
6 Reports on Form 10-Q, using professional standards
7 and procedures for conducting such reviews;
- 8 • Conducting a post-audit review of the financial
9 statements and audit findings, including any
10 suggestions for improvements provided to
11 management by internal audit or the independent
12 auditors, and management's response to such
13 suggestions;
- 14 • Reviewing with the independent auditor any audit
15 problems or difficulties the independent auditor
16 encountered in the course of audit work (e.g.,
17 restrictions on the scope of the independent
18 auditor's activities or access to requested
19 information and any significant disagreements with
20 management) and the management's response;
- 21 • Reviewing, prior to announcement, Company press
22 releases and other disclosures containing financial
23 information for the purpose of ensuring that such
24 press releases and other disclosures properly
25 disclose financial information presented in
26 accordance with GAAP and, to the extent non-
27 GAAP information is included, adequately disclose
28 how such non-GAAP information differs from the
comparable GAAP information and ensure that
disclosure of such non-GAAP information is not
given undue prominence and that such non-GAAP
information does not provide a misleading
presentation of the Company's results of operations
or financial condition;
- Providing oversight and review at least annually the
Company's major financial risk exposures and the

steps management has taken to monitor and control these exposures, including the Company's risk assessment and risk management policies, and its investment policies;

- Reviewing and discussing the adequacy and effectiveness of the Company's information security policies and the procedures and controls regarding information systems;
- Reviewing and approving in advance any proposed related party transactions;
- Reviewing, in conjunction with counsel, any legal matters that could have a significant impact on the Company's financial statements;
- Reviewing its own charter and processes on an annual basis; and
- Conducting an annual performance evaluation of its effectiveness.

SUBSTANTIVE ALLEGATIONS

19. On May 5, 2016, WageWorks issued a press release including the following summary of the Company's financial results for the quarter ending March 31, 2016 as well as detailed tables disclosing various financial metrics:

WageWorks Reports First Quarter 2016 Financial Results

Total revenue in the first quarter of \$87.0 million

- First quarter 2016 GAAP net income of \$5.8 million or \$0.16 per diluted share, Non-GAAP net income of \$11.9 million or \$0.33 per diluted share
- First quarter 2016 non-GAAP adjusted EBITDA of \$25.1 million, a 14 percent increase year-over-year

1 SAN MATEO, Calif., May 05, 2016 (GLOBE
2 NEWSWIRE) -- WageWorks, Inc. (the "Company")
3 (NYSE: WAGE), a leader in administering Consumer-
4 Directed Benefits (CDBs), which empower employees to
5 save money on taxes while also providing corporate tax
6 advantages for employers, today announced the
7 Company's financial results for its first quarter ended
8 March 31, 2016.

9 "2016 is off to a great start. We see encouraging results in
10 our commuter business and demand across all of our
11 healthcare offerings remains strong, especially as it relates
12 to Health Savings Accounts. Our selling season is
13 progressing very well, highlighted by an exciting new
14 relationship with the Federal government. Our channel
15 partnership and exchange business is growing, and we are
16 successfully fostering existing relationships and
17 continuously developing new opportunities. As we move
18 through 2016, we are well positioned to execute on our
19 multiple avenues for growth and drive leverage in the
20 business," said Joe Jackson, Chief Executive Officer of
21 WageWorks.

22 For the first quarter, WageWorks reported total revenue of
23 \$87.0 million, compared to \$85.3 million for the first
24 quarter of 2015. Healthcare revenue was \$50.4 million,
25 compared to \$47.3 million for the first quarter of 2015, an
26 increase of 7 percent. Commuter revenue was \$17.4
27 million, compared to \$15.9 million for the first quarter of
28 2015, an increase of 9 percent. COBRA revenue was \$15.4
million, compared to \$12.6 million for the first quarter of
2015, an increase of 22 percent. Other revenue was \$3.9
million, compared to \$9.5 million for the first quarter of
2015.

GAAP operating income was \$9.9 million for the first
quarter of 2016, an increase compared to GAAP operating
income of \$9.7 million for the first quarter of 2015. On a
non-GAAP basis, first quarter of 2016 operating income
was \$20.2 million, an increase compared to non-GAAP

1 operating income of \$18.0 million for the first quarter of
2 2015.

3 GAAP net income was \$5.8 million, or \$0.16 per diluted
4 share, for the first quarter of 2016, compared to GAAP net
5 income of \$5.6 million, or \$0.15 per diluted share, for the
6 first quarter of 2015.

7 On a non-GAAP net income basis, first quarter of 2016 net
8 income was \$11.9 million, or \$0.33 per diluted share, an
9 increase compared to non-GAAP net income of \$10.5
10 million, or \$0.29 per diluted share, for the first quarter of
11 2015.

12 Non-GAAP net income for the first quarter of 2015 and
13 2016 excludes expenses related to stock-based
14 compensation, amortization of acquired intangibles,
15 contingent consideration expense and the related tax
16 impact of these items.

17 Non-GAAP adjusted EBITDA was \$25.1 million for the
18 first quarter of 2016, a 14 percent increase compared to
19 non-GAAP adjusted EBITDA of \$22.0 million for the first
20 quarter of 2015.

21 The reconciliation of the non-GAAP measures to the
22 comparable GAAP measures for the first quarter 2016 and
23 2015 is detailed in the tables provided in this press release.
24 As of March 31, 2016, WageWorks had cash and cash
25 equivalents totaling \$562.4 million. This compares to cash
26 and cash equivalents totaling \$500.9 million as of
27 December 31, 2015.

28 20. In addition to disclosing the Company's financial performance for the
quarter, in the Q1 2016 10-Q, the Company asserted that Defendant Jackson had
evaluated the effectiveness of the Company's disclosure controls and procedures:

Evaluation of Disclosure Controls and Procedures

1 We maintain “disclosure controls and procedures,” as such
2 term is defined in Rule 13a-15(e) and 15d-15(e) under the
3 Securities Exchange Act of 1934, or the Exchange Act,
4 that are designed to ensure that information required to be
5 disclosed by us in reports that we file or submit under the
6 Exchange Act is recorded, processed, summarized and
7 reported within the time periods specified in the rules and
8 forms of the Securities and Exchange Commission, or the
9 SEC, and that such information is accumulated and
10 communicated to our management, including our Chief
11 Executive Officer and Chief Financial Officer, as
12 appropriate to allow timely decisions regarding required
13 disclosure. In designing and evaluating our disclosure
14 controls and procedures, management recognizes that
15 disclosure controls and procedures, no matter how well
16 conceived and operated, can provide only reasonable, not
17 absolute, assurance that the objectives of the disclosure
18 controls and procedures are met.

13 Our management, with the participation of our Chief
14 Executive Officer and Chief Financial Officer, evaluated
15 the effectiveness of our disclosure controls and procedures
16 pursuant to Rule 13a-15 under the Securities Exchange Act
17 of 1934, as amended (Exchange Act), as of the end of the
18 period covered by this Quarterly Report on Form 10-Q.

18 Based on this evaluation, our Chief Executive Officer and
19 Chief Financial Officer concluded that, as of March 31,
20 2016, our disclosure controls and procedures are designed
21 at a reasonable assurance level and are effective to provide
22 reasonable assurance that information we are required to
23 disclose in reports that we file or submit under the
24 Exchange Act is recorded, processed, summarized, and
25 reported within the time periods specified in the SEC’s
26 rules and forms, and that such information is accumulated
27 and communicated to our management, including our
28 Chief Executive Officer and Chief Financial Officer, as
appropriate, to allow timely decisions regarding required
disclosures.

21. In addition, in the Q1 2016 Form 10-Q, the Company asserted that no material changes in internal control over accounting had occurred during the quarter. “There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) or the Exchange Act that occurred during the period covered by this Quarterly Report on Form 10-Q that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.”

22. Following the filing of the Q1 2016 Form 10-Q, WageWorks held a conference call with analysts to discuss the Company’s Q1 2016 financial results.

23. On August 9, 2016, WageWorks issued a press release including the following summary of the Company’s financial results for the quarter ending June 30, 2016 as well as detailed tables disclosing various financial metrics:

WageWorks Reports Second Quarter 2016 Financial Results

- Total revenue in the second quarter 2016 of \$87.7 million
- Second quarter 2016 GAAP net income of \$2.9 million or \$0.08 per diluted share, Non-GAAP net income of \$13.3 million or \$0.36 per diluted share
- Second quarter 2016 non-GAAP adjusted EBITDA of \$27.5 million, a 24 percent increase year-over-year

SAN MATEO, Calif., Aug. 09, 2016 (GLOBE NEWSWIRE) -- WageWorks, Inc. (the “Company”) (NYSE: WAGE), a leader in administering Consumer-Directed Benefits (CDBs), which empower employees to save money on taxes while also providing corporate tax advantages for employers, today announced the Company's financial results for its second quarter ended June 30, 2016.

1 “The first half of 2016 was another strong one for
2 WageWorks. Our selling season is progressing extremely
3 well due to record interest in all of our products.
4 Employers are increasingly choosing us as their
5 administrator for Consumer Directed Benefits because of
6 our service excellence and the ease of use of our programs
7 on one consolidated platform. We have entered into
8 several new channel partnerships and have expanded
9 others. We expect this positive momentum to continue in
10 the second half of the year as we capitalize on the
11 expansion we are seeing in the industry,” said Joe Jackson,
12 Chief Executive Officer of WageWorks.

13 For the second quarter, WageWorks reported total revenue
14 of \$87.7 million, compared to \$82.8 million for the second
15 quarter of 2015, an increase of 6 percent. Healthcare
16 revenue was \$48.1 million, compared to \$43.8 million for
17 the second quarter of 2015, an increase of 10 percent.
18 Commuter revenue was \$17.4 million, compared to \$16.0
19 million for the second quarter of 2015, an increase of 9
20 percent. COBRA revenue was \$17.9 million, compared to
21 \$12.3 million for the second quarter of 2015, an increase of
22 46 percent. Other revenue was \$4.4 million, compared to
23 \$10.6 million for the second quarter of 2015.

24 GAAP operating income was \$4.6 million for the second
25 quarter of 2016, compared to GAAP operating income of
26 \$6.8 million for the second quarter of 2015. On a non-
27 GAAP basis, second quarter of 2016 operating income was
28 \$22.3 million, an increase compared to non-GAAP
operating income of \$17.5 million for the second quarter of
2015.

GAAP net income was \$2.9 million, or \$0.08 per diluted
share, for the second quarter of 2016, compared to GAAP
net income of \$3.5 million, or \$0.10 per diluted share, for
the second quarter of 2015.

On a non-GAAP net income basis, second quarter of 2016
net income was \$13.3 million, or \$0.36 per diluted share,
an increase compared to non-GAAP net income of \$10.3
million, or \$0.28 per diluted share, for the second quarter

of 2015. Non-GAAP net income for the second quarter of 2015 and 2016 excludes expenses related to stock-based compensation, amortization of acquired intangibles, contingent consideration expense, severance costs related to integration initiatives and the related tax impact of these items. Non-GAAP adjusted EBITDA was \$27.5 million for the second quarter of 2016, a 24 percent increase compared to non-GAAP adjusted EBITDA of \$22.2 million for the second quarter of 2015.

The reconciliation of the non-GAAP measures to the comparable GAAP measures for the second quarter 2016 and 2015 is detailed in the tables provided in this press release. As of June 30, 2016, WageWorks had cash and cash equivalents totaling \$569.0 million. This compares to cash and cash equivalents totaling \$500.9 million as of December 31, 2015.

24. On August 9, 2016, the Company filed a Form 10-Q for the quarter ended June 30, 2016 (“Q2 2016 Form 10-Q”) with the SEC, which provided the Company’s second quarter 2016 financial results and positions and stated that the Company’s internal controls over financial reporting was effective as of June 30, 2016.

25. Following the filing of the Q2 2016 Form 10-Q, WageWorks held a conference call with analysts to discuss the Company’s Q2 2016 financial results.

26. On November 9, 2016, WageWorks issued a press release including the following summary of the Company’s financial results for the quarter ending September 30, 2016 as well as detailed tables disclosing various financial metrics:

WageWorks Reports Third Quarter 2016 Financial Results

- Total revenue in the third quarter 2016 of \$88.9 million
- Third quarter 2016 GAAP net income of \$5.9 million or \$0.16 per diluted share, Non-GAAP net income of \$12.6 million or \$0.34 per diluted share

- Third quarter 2016 non-GAAP adjusted EBITDA of \$26.5 million

SAN MATEO, Calif., November 9, 2016 (GLOBE NEWSWIRE) -- WageWorks, Inc. (the "Company") (NYSE: WAGE), a leader in administering Consumer-Directed Benefits, today announced the Company's financial results for its third quarter ended September 30, 2016.

"I am very pleased with our strong third quarter results. We are in the midst of another record setting new sales year driven by increased interest across all of our products from employers of all sizes. The successful transition of the existing participants on the United States Office of Personnel Management's Federal Flexible Spending Account Program to our platform marks the largest transition of accounts in our history. We continue to enter into new carrier and channel partnerships, which are producing additional opportunities and solid growth. Finally, we are excited about our pending acquisition of ADP's Consumer Health Spending Account and COBRA businesses and our new ongoing partnership with ADP. We are poised to finish 2016 with strong momentum, as we are clearly executing on our multiple avenues for growth," said Joe Jackson, Chief Executive Officer of WageWorks.

For the third quarter, WageWorks reported total revenue of \$88.9 million, compared to \$83.2 million for the third quarter of 2015, an increase of 7 percent. Healthcare revenue was \$48.5 million, compared to \$42.2 million for the third quarter of 2015, an increase of 15 percent. Commuter revenue was \$17.6 million, compared to \$16.0 million for the third quarter of 2015, an increase of 10 percent. COBRA revenue was \$18.7 million, compared to \$12.2 million for the third quarter of 2015, an increase of 53 percent. Other revenue was \$4.2 million, compared to \$12.7 million for the third quarter of 2015.

GAAP operating income was \$9.4 million for the third quarter of 2016, compared to GAAP operating income of \$12.7 million for the third quarter of 2015. On a non-GAAP basis, third quarter of 2016 operating income was \$21.3 million, compared to non-GAAP operating income of \$21.9 million for the third quarter of 2015.

GAAP net income was \$5.9 million, or \$0.16 per diluted share, for the third quarter of 2016, compared to GAAP net income of \$7.6 million, or \$0.21 per diluted share, for the third quarter of 2015.

On a non-GAAP basis, third quarter of 2016 net income was \$12.6 million, or \$0.34 per diluted share, compared to non-GAAP net income of \$13.0 million, or \$0.36 per diluted share, for the third quarter of 2015. Non-GAAP net income for the third quarter of 2015 and 2016 excludes expenses related to stock-based compensation, amortization of acquired intangibles, contingent consideration expense, severance costs related to integration initiatives, costs associated with the planned acquisition of ADP's Consumer Health Spending Account and COBRA businesses, and the related tax impact of these items. Non-GAAP adjusted EBITDA was \$26.5 million for the third quarter of 2016, which remained flat as compared to non-GAAP adjusted EBITDA for the third quarter of 2015.

The reconciliation of the non-GAAP measures to the comparable GAAP measures for the third quarter 2016 and 2015 is detailed in the tables provided in this press release.

As of September 30, 2016, WageWorks had cash and cash equivalents totaling \$666.6 million. This compares to cash and cash equivalents totaling \$500.9 million as of December 31, 2015.

27. Thereafter, on May 5, 2016, WageWorks filed a Form 10-Q for the quarter ending March 31, 2016 (the "Q1 2016 Form 10-Q").

28. In addition to disclosing the Company's financial performance for the quarter, in the Q1 2016 10-Q, the Company asserted that Defendant Jackson had evaluated the effectiveness of the Company's disclosure controls and procedures:

Evaluation of Disclosure Controls and Procedures

We maintain "disclosure controls and procedures," as such term is defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, or the Exchange Act, that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the Securities and Exchange Commission, or the SEC, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognizes that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met.

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, as amended (Exchange Act), as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of March 31, 2016, our disclosure controls and procedures are designed at a reasonable assurance level and are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the SEC's

rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

29. In addition, in the Q1 2016 Form 10-Q, the Company asserted that no material changes in internal control over accounting had occurred during the quarter. “There was no change in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) or the Exchange Act that occurred during the period covered by this Quarterly Report on Form 10-Q that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.”

30. Following the filing of the Q1 2016 Form 10-Q, WageWorks held a conference call with analysts to discuss the Company’s Q1 2016 financial results.

31. On August 9, 2016, after the close of the market, WageWorks issued a press release including the following summary of the Company’s financial results for the quarter ending June 30, 2016 as well as detailed tables disclosing various financial metrics:

WageWorks Reports Second Quarter 2016 Financial Results

- Total revenue in the second quarter 2016 of \$87.7 million
- Second quarter 2016 GAAP net income of \$2.9 million or \$0.08 per diluted share, Non-GAAP net income of \$13.3 million or \$0.36 per diluted share
- Second quarter 2016 non-GAAP adjusted EBITDA of \$27.5 million, a 24 percent increase year-over-year

SAN MATEO, Calif., Aug. 09, 2016 (GLOBE NEWSWIRE) -- WageWorks, Inc. (the “Company”) (NYSE: WAGE), a leader in administering Consumer-Directed Benefits (CDBs), which empower employees to

1 save money on taxes while also providing corporate tax
2 advantages for employers, today announced the
3 Company's financial results for its second quarter ended
4 June 30, 2016.

5 “The first half of 2016 was another strong one for
6 WageWorks. Our selling season is progressing extremely
7 well due to record interest in all of our products.
8 Employers are increasingly choosing us as their
9 administrator for Consumer Directed Benefits because of
10 our service excellence and the ease of use of our programs
11 on one consolidated platform.

12 We have entered into several new channel partnerships and
13 have expanded others. We expect this positive momentum
14 to continue in the second half of the year as we capitalize
15 on the expansion we are seeing in the industry,” said Joe
16 Jackson, Chief Executive Officer of WageWorks.

17 For the second quarter, WageWorks reported total revenue
18 of \$87.7 million, compared to \$82.8 million for the second
19 quarter of 2015, an increase of 6 percent. Healthcare
20 revenue was \$48.1 million, compared to \$43.8 million for
21 the second quarter of 2015, an increase of 10 percent.
22 Commuter revenue was \$17.4 million, compared to \$16.0
23 million for the second quarter of 2015, an increase of 9
24 percent. COBRA revenue was \$17.9 million, compared to
25 \$12.3 million for the second quarter of 2015, an increase of
26 46 percent. Other revenue was \$4.4 million, compared to
27 \$10.6 million for the second quarter of 2015.

28 GAAP operating income was \$4.6 million for the second
quarter of 2016, compared to GAAP operating income of
\$6.8 million for the second quarter of 2015. On a non-
GAAP basis, second quarter of 2016 operating income was
\$22.3 million, an increase compared to non-GAAP
operating income of \$17.5 million for the second quarter of
2015.

GAAP net income was \$2.9 million, or \$0.08 per diluted
share, for the second quarter of 2016, compared to GAAP

1 net income of \$3.5 million, or \$0.10 per diluted share, for
2 the second quarter of 2015.

3 On a non-GAAP net income basis, second quarter of 2016
4 net income was \$13.3 million, or \$0.36 per diluted share,
5 an increase compared to non-GAAP net income of \$10.3
6 million, or \$0.28 per diluted share, for the second quarter
7 of 2015. Non-GAAP net income for the second quarter of
8 2015 and 2016 excludes expenses related to stock-based
9 compensation, amortization of acquired intangibles,
10 contingent consideration expense, severance costs related
11 to integration initiatives and the related tax impact of these
12 items. Non-GAAP adjusted EBITDA was \$27.5 million
13 for the second quarter of 2016, a 24 percent increase
14 compared to non-GAAP adjusted EBITDA of \$22.2
15 million for the second quarter of 2015.

16 The reconciliation of the non-GAAP measures to the
17 comparable GAAP measures for the second quarter 2016
18 and 2015 is detailed in the tables provided in this press
19 release. As of June 30, 2016, WageWorks had cash and
20 cash equivalents totaling \$569.0 million. This compares to
21 cash and cash equivalents totaling \$500.9 million as of
22 December 31, 2015.

23 32. On August 9, 2016, the Company filed a Form 10-Q for the quarter
24 ended June 30, 2016 ("Q2 2016 Form 10-Q") with the SEC, which provided the
25 Company's second quarter 2016 financial results and positions and stated that the
26 Company's internal controls over financial reporting was effective as of June 30,
27 2016.

28 33. Following the filing of the Q2 2016 Form 10-Q, WageWorks held a
conference call with analysts to discuss the Company's Q2 2016 financial results.

34. On November 9, 2016, after the close of the market, WageWorks
issued a press release including the following summary of the Company's financial
results for the quarter ending September 30, 2016 as well as detailed tables
disclosing various financial metrics:

WageWorks Reports Third Quarter 2016 Financial Results

- Total revenue in the third quarter 2016 of \$88.9 million
- Third quarter 2016 GAAP net income of \$5.9 million or \$0.16 per diluted share, Non-GAAP net income of \$12.6 million or \$0.34 per diluted share
- Third quarter 2016 non-GAAP adjusted EBITDA of \$26.5 million

SAN MATEO, Calif., November 9, 2016 (GLOBE NEWSWIRE) -- WageWorks, Inc. (the "Company") (NYSE: WAGE), a leader in administering Consumer-Directed Benefits, today announced the Company's financial results for its third quarter ended September 30, 2016.

"I am very pleased with our strong third quarter results. We are in the midst of another record setting new sales year driven by increased interest across all of our products from employers of all sizes. The successful transition of the existing participants on the United States Office of Personnel Management's Federal Flexible Spending Account Program to our platform marks the largest transition of accounts in our history. We continue to enter into new carrier and channel partnerships, which are producing additional opportunities and solid growth. Finally, we are excited about our pending acquisition of ADP's Consumer Health Spending Account and COBRA businesses and our new ongoing partnership with ADP. We are poised to finish 2016 with strong momentum, as we are clearly executing on our multiple avenues for growth," said Joe Jackson, Chief Executive Officer of WageWorks.

For the third quarter, WageWorks reported total revenue of \$88.9 million, compared to \$83.2 million for the third quarter of 2015, an increase of 7 percent. Healthcare revenue was \$48.5 million, compared to \$42.2 million for

1 the third quarter of 2015, an increase of 15 percent.
2 Commuter revenue was \$17.6 million, compared to \$16.0
3 million for the third quarter of 2015, an increase of 10
4 percent. COBRA revenue was \$18.7 million, compared to
5 \$12.2 million for the third quarter of 2015, an increase of
53 percent. Other revenue was \$4.2 million, compared to
\$12.7 million for the third quarter of 2015.

6 GAAP operating income was \$9.4 million for the third
7 quarter of 2016, compared to GAAP operating income of
8 \$12.7 million for the third quarter of 2015. On a non-
9 GAAP basis, third quarter of 2016 operating income was
10 \$21.3 million, compared to non-GAAP operating income
of \$21.9 million for the third quarter of 2015.

11 GAAP net income was \$5.9 million, or \$0.16 per diluted
12 share, for the third quarter of 2016, compared to GAAP net
13 income of \$7.6 million, or \$0.21 per diluted share, for the
third quarter of 2015.

14 On a non-GAAP basis, third quarter of 2016 net income
15 was \$12.6 million, or \$0.34 per diluted share, compared to
16 non-GAAP net income of \$13.0 million, or \$0.36 per
17 diluted share, for the third quarter of 2015. Non-GAAP net
18 income for the third quarter of 2015 and 2016 excludes
19 expenses related to stock-based compensation,
20 amortization of acquired intangibles, contingent
21 consideration expense, severance costs related to
22 integration initiatives, costs associated with the planned
acquisition of ADP's Consumer Health Spending Account
and COBRA businesses, and the related tax impact of
these items.

23 Non-GAAP adjusted EBITDA was \$26.5 million for the
24 third quarter of 2016, which remained flat as compared to
25 non-GAAP adjusted EBITDA for the third quarter of
2015.

26 The reconciliation of the non-GAAP measures to the
27 comparable GAAP measures for the third quarter 2016 and
28 2015 is detailed in the tables provided in this press release.

As of September 30, 2016, WageWorks had cash and cash equivalents totaling \$666.6 million. This compares to cash and cash equivalents totaling \$500.9 million as of December 31, 2015.

35. Thereafter, on November 9, 2016, the Company filed a Form 10-Q for the quarter ended, 2016 (“Q3 2016 Form 10-Q”) with the SEC, which provided the Company’s third quarter 2016 financial results and positions and stated that the Company’s internal controls over financial reporting was effective as of September 30, 2016.

36. Following the filing of the Q3 2016 Form 10-Q, WageWorks held a conference call with analysts to discuss the Company’s Q3 2016 financial results.

37. On February 23, 2017, after the close of the market, the Company issued a press release including the following summary of the Company’s financial results for the quarter and fiscal year ending December 31, 2016 as well as detailed tables disclosing various financial metrics:

WageWorks Reports Fourth Quarter and Full Year 2016 Financial Results

- Fourth quarter 2016 total revenue of \$101.1 million, a 22 percent increase year-over-year
- Full year 2016 total revenue of \$364.7 million
- Fourth quarter 2016 GAAP net income of \$5.7 million or \$0.15 per diluted share, Non-GAAP net income of \$13.6 million or \$0.36 per diluted share
- Full year 2016 GAAP net income of \$20.2 million or \$0.54 per diluted share, Non GAAP net income of \$51.3 million or \$1.38 per diluted share
- Fourth quarter 2016 non-GAAP adjusted EBITDA of \$28.8 million
- Full year 2016 non-GAAP adjusted EBITDA of \$108.0 million

1 SAN MATEO, Calif., February 23, 2017 (GLOBE
2 NEWSWIRE) -- WageWorks, Inc. (the "Company",
3 "WageWorks") (NYSE: WAGE), a leader in administering
4 Consumer-Directed Benefits, today announced the
5 Company's financial results for its fourth quarter and fiscal
6 year ended December 31, 2016.

7 "2016 was an outstanding year for WageWorks. Our sales
8 team delivered another record performance and we just
9 completed a successful open enrollment season that
10 included onboarding the largest number of participants in
11 our history. We saw increased demand for all of our
12 products, with continued strength in HSAs and FSAs.
13 There was a significant uptick in employers interested in
14 our full suite of Consumer Directed Benefits and selecting
15 us to administer multiple offerings. We added a number of
16 new carrier relationships and channel partners, including
17 our first rideshare partner. We acquired ADP's CHSA and
18 COBRA businesses and while that transaction closed
19 about two weeks later than we were expecting, we are
20 pleased with the results we are seeing and encouraged by
21 the number of new business opportunities we are already
22 receiving from the ongoing partnership we established as
23 part of that transaction. We continue to see positive
24 momentum in all aspects of our business and enter 2017
25 well positioned to execute on the foundation that we built
26 in 2016," said Joe Jackson, Chief Executive Officer of
27 WageWorks.

28 **Fourth Quarter 2016 Financial Highlights**

For the fourth quarter, WageWorks reported total revenue of \$101.1 million, compared to \$83.1 million for the fourth quarter of 2015, an increase of 22 percent. Healthcare revenue was \$56.0 million, compared to \$43.3 million for the fourth quarter of 2015, an increase of 29 percent. Commuter revenue was \$17.8 million, compared to \$16.0 million for the fourth quarter of 2015, an increase of 11 percent. COBRA revenue was \$23.3 million, compared to \$14.2 million for the fourth quarter of 2015, an increase of

64 percent. Other revenue was \$4.0 million, compared to \$9.7 million for the fourth quarter of 2015.

GAAP operating income was \$8.7 million for the fourth quarter of 2016, compared to GAAP operating income of \$10.8 million for the fourth quarter of 2015. On a non-GAAP basis, fourth quarter of 2016 operating income was \$22.1 million, compared to non-GAAP operating income of \$20.8 million for the fourth quarter of 2015. GAAP net income was \$5.7 million, or \$0.15 per diluted share, for the fourth quarter of 2016, compared to GAAP net income of \$6.2 million, or \$0.17 per diluted share, for the fourth quarter of 2015.

On a non-GAAP basis, fourth quarter of 2016 net income was \$13.6 million, or \$0.36 per diluted share, compared to non-GAAP net income of \$12.0 million, or \$0.33 per diluted share, for the fourth quarter of 2015. Non-GAAP net income for the fourth quarter of 2015 and 2016 excludes expenses related to stock-based compensation, amortization of acquired intangibles, employee termination and other charges, contingent consideration expense, and the related tax impact of these items.

Non-GAAP adjusted EBITDA was \$28.8 million for the fourth quarter of 2016, an increase of 12 percent as compared to \$25.8 million for the fourth quarter of 2015.

The reconciliation of the non-GAAP measures to the comparable GAAP measures for the fourth quarter 2016 and 2015 is detailed in the tables provided in this press release.

Full Year 2016 Financial Highlights

For the full year of 2016, WageWorks reported total revenue of \$364.7 million, compared to \$334.3 million for the full year of 2015, an increase of nine percent. Healthcare revenue was \$202.9 million, compared to \$176.6 million for the full year of 2015, an increase of 15 percent. Commuter revenue was \$70.2 million, compared

1 to \$63.9 million for the full year of 2015, an increase of 10
2 percent. COBRA revenue was \$75.2 million, compared to
3 \$51.3 million for the full year of 2015, an increase of 47
percent.

4 Other revenue was \$16.4 million, compared to \$42.5
5 million for the full year of 2015. GAAP operating income
6 was \$32.7 million for the full year of 2016, compared to
7 GAAP operating income of \$39.9 million for the full year
8 of 2015. On a non-GAAP basis, full year of 2016
9 operating income was \$86.0 million, compared to non-
GAAP operating income of \$78.2 million for the full year
of 2015.

10 GAAP net income was \$20.2 million, or \$0.54 per diluted
11 share, for the full year of 2016, compared to GAAP net
12 income of \$23.0 million, or \$0.63 per diluted share, for the
full year of 2015.

13 On a non-GAAP basis, full year 2016 net income was
14 \$51.3 million, or \$1.38 per diluted share, compared to non-
15 GAAP net income of \$45.8 million, or \$1.25 per diluted
16 share, for the full year of 2015. Non-GAAP net income for
17 the full year of 2015 and 2016 excludes expenses related to
18 stock-based compensation, amortization of acquired
19 intangibles, employee termination and other charges,
contingent consideration expense, and the related tax
impact of these items.

20 Non-GAAP adjusted EBITDA was \$108.0 million for the
21 full year of 2016, an increase of 12 percent as compared to
22 \$96.5 million for the full year of 2015.

23 The reconciliation of the non-GAAP measures to the
24 comparable GAAP measures for the full year of 2016 and
2015 is detailed in the tables provided in this press release.

25 As of December 31, 2016, WageWorks had cash and cash
26 equivalents totaling \$678.3 million. This compares to cash
27 and cash equivalents totaling \$500.9 million as of
28 December 31, 2015.

38. Thereafter, on February 23, 2017, the Company filed a Form 10-K for the fiscal year ending December 31, 2016 (“2016 Form 10-K”) with the SEC, which provided the Company’s financial results for the fourth quarter and full fiscal year 2016.

39. Following the filing of the 2016 Form 10-K, WageWorks held a conference call with analysts to discuss the Company’s financial results for the fourth quarter and full year 2016.

40. On May 4, 2017, WageWorks issued a press release including the follow summary of its financial results for the quarter ending March 31, 2017 as well as detailed tables disclosing various financial metrics:

WageWorks Reports First Quarter 2017 Financial Results

- Total revenue in the first quarter 2017 of \$125.0 million, a 44 percent increase year-over-year
- First quarter 2017 GAAP net income of \$11.1 million or \$0.29 per diluted share, a 91% increase year-over-year
- First quarter 2017 non-GAAP net income of \$17.6 million or \$0.46 per diluted shares, a 48% increase year-over-year
- First quarter 2017 non-GAAP adjusted EBITDA of \$36.1 million, a 44 percent increase year-over-year

SAN MATEO, Calif., May 04, 2017 (GLOBE NEWSWIRE) -- WageWorks, Inc. (the “Company”) (NYSE: WAGE), a leader in administering Consumer-Directed Benefits, today announced the Company's financial results for its first quarter ended March 31, 2017.

“I am pleased with our first quarter results. We achieved strong financial metrics across the board that all exceeded our guidance. Our sales pipeline has doubled year over year and our 2017 selling season is off to a terrific start as

1 we continue to see substantial interest in our full suite of
2 Consumer Directed Benefit offerings. The integration of
3 ADP's CHSA and COBRA businesses is progressing
4 ahead of schedule, we continue to expand our reach in the
5 commuter space, and we are seeing increased activity from
6 our many revenue generating channel partners and carrier
7 relationships" said Joe Jackson, Chairman and Chief
8 Executive Officer of WageWorks.

9 For the first quarter, WageWorks reported total revenue of
10 \$125.0 million, compared to \$87.0 million for the first
11 quarter of 2016, an increase of 44 percent. Healthcare
12 revenue was \$74.0 million, compared to \$50.4 million for
13 the first quarter of 2016, an increase of 47 percent.
14 Commuter revenue was \$18.4 million, compared to \$17.4
15 million for the first quarter of 2016, an increase of 6
16 percent. COBRA revenue was \$28.3 million, compared to
17 \$15.4 million for the first quarter of 2016, an increase of
18 84 percent. Other revenue was \$4.4 million, compared to
19 \$3.9 million for the first quarter of 2016.

20 GAAP operating income was \$15.6 million for the first
21 quarter of 2017, compared to GAAP operating income of
22 \$9.9 million for the first quarter of 2016. On a non-GAAP
23 basis, first quarter of 2017 operating income was \$30.8
24 million, compared to non-GAAP operating income of
25 \$20.2 million for the first quarter of 2016.

26 GAAP net income was \$11.1 million, or \$0.29 per diluted
27 share, for the first quarter of 2017, compared to GAAP net
28 income of \$5.8 million, or \$0.16 per diluted share, for the
first quarter of 2016.

On a non-GAAP basis, first quarter of 2017 net income
was \$17.6 million, or \$0.46 per diluted share, compared to
non-GAAP net income of \$11.9 million, or \$0.33 per
diluted share, for the first quarter of 2016. Non-GAAP net
income for the first quarter of 2017 and 2016 excludes
expenses related to stock-based compensation,
amortization of acquired intangibles, employee termination

1 and other charges, and the related tax impact of these
2 items.

3 Non-GAAP adjusted EBITDA was \$36.1 million for the
4 first quarter of 2017, an increase of 44 percent as
5 compared to non-GAAP adjusted EBITDA of \$25.1
6 million for the first quarter of 2016.

7 The reconciliation of the non-GAAP measures to the
8 comparable GAAP measures for the first quarter 2017 and
9 2016 is detailed in the tables provided in this press release.

10 As of March 31, 2017, WageWorks had cash and cash
11 equivalents totaling \$609.4 million. This compares to cash
12 and cash equivalents totaling \$678.3 million as of
13 December 31, 2016.

14 41. On May 4, 2017, WageWorks filed a Form 10-Q for the quarter
15 ending March 31, 2017 (the "Q1 2017 Form 10-Q").

16 42. Following the filing of the Q1 2017 Form 10-Q, WageWorks held a
17 conference call with analysts in which Defendants discussed the Company's Q1
18 2017 financial results.

19 43. On June 19, 2017, WageWorks issued a press release announcing a
20 secondary equity offering of 2.5 million shares, priced at \$69.25 per share.

21 **WageWorks Announces Pricing of its Follow-On** 22 **Public Offering**

23 SAN MATEO, Calif., June 19, 2017 (GLOBE
24 NEWSWIRE) -- WageWorks, Inc. (NYSE: WAGE) today
25 announced the pricing of its follow-on public offering of
26 2,500,000 shares of its common stock at a price to the
27 public of \$69.25 per share. WageWorks is selling
28 1,954,852 shares of common stock, and certain of
WageWorks' existing stockholders are selling an
aggregate of 545,148 shares of common stock, in the
offering. WageWorks has also granted the underwriters a
30-day option to purchase up to 375,000 additional shares.

1 WageWorks intends to use the proceeds of the primary
2 portion of the offering will be used for general corporate
3 purposes, including strategic acquisitions, channel partner
4 arrangements, capital expenditures and operating costs.
5 WageWorks will not receive any proceeds from the sale of
6 shares by the selling stockholders. William Blair &
7 Company, L.L.C. and Stifel, Nicolaus & Company,
8 Incorporated are serving as joint book-running managers
9 for the offering, with JMP Securities LLC, Needham &
10 Company, LLC and SunTrust Robinson Humphrey, Inc.
11 acting as comanagers.

12 The offering is being made pursuant to an automatically
13 effective shelf registration statement on Form S-3 filed
14 with the U.S. Securities and Exchange Commission (the
15 “SEC”) and only by means of a prospectus supplement and
16 accompanying prospectus.

17 These materials are available at no charge by visiting the
18 SEC’s website at edgar.sec.gov. A copy of the prospectus
19 supplement and accompanying prospectus may also be
20 obtained from William Blair & Company, L.L.C. at 222
21 West Adams Street, Attention: Prospectus Department,
22 Chicago, IL 60606, phone number (800) 621-0687, or
23 from Stifel, Nicolaus & Company, Incorporated at One
24 Montgomery Street, Suite 3700, San Francisco, CA 94104,
25 phone number (415) 364-2720.

26 This press release shall not constitute an offer to sell or the
27 solicitation of an offer to buy, nor shall there be any sale of
28 these securities in any state or jurisdiction in which such an
offer, solicitation or sale would be unlawful prior to
registration or qualification under the securities laws of
any such state or jurisdiction.

44. In the secondary offering, Defendant Jackson took advantage of the
inflation on the trading price of WageWorks common stock arising from the
previously issued false and misleading financial statements. Defendant Jackson
sold nearly all of his holdings in WageWorks common stock, selling 495,148

1 shares after exercising options to purchase more than 400,000 shares at prices
 2 between \$5.32 and \$9.59 per share and generating proceeds of \$31.3 million.
 3 Defendant Jackson's stock sales were not made pursuant to a 10b5-1 trading plan
 4 and they were dramatically out of line with past trading practices.

5 45. On August 1, 2017, WageWorks issued a press release including the
 6 following summary of the Company's financial results for the quarter ending June
 7 30, 2017 and tables disclosing various financial metrics:

8 9 **WageWorks Reports Second Quarter 2017 Financial Results**

- 10 • Total revenue in the second quarter 2017 of \$119.9 million, a 37 percent increase year-over-year
- 11 • Second quarter 2017 GAAP net income of \$19.1 million or \$0.49 per diluted share
- 12 • Second quarter 2017 non-GAAP net income of \$17.7 million or \$0.46 per diluted shares, a 33 percent increase year-over-year
- 13 • Second quarter 2017 non-GAAP adjusted EBITDA of \$36.6 million, a 33 percent increase year-over-year

14 SAN MATEO, Calif., August 1, 2017 (GLOBE
 15 NEWSWIRE) -- WageWorks, Inc. (the "Company")
 16 (NYSE: WAGE), a leader in administering Consumer-Directed Benefits, today announced the Company's
 17 financial results for its second quarter ended June 30,
 18 2017.

19 **Executive Quotes**

20 "We just finished another great quarter highlighted by an
 21 outstanding growth rate and strong financial metrics across
 22 the board," said Joe Jackson, Chairman and Chief
 23 Executive Officer of WageWorks. "Our selling season
 24 continues on another record setting pace, activity from our
 25 channel partners and carrier relationships is strong, and we

1 are reaching an expanded demographic in our commuter
2 business. The integration of ADP's businesses continues to
3 progress well, and our acquisition pipeline remains active
4 across all areas of our business."

5 **Second Quarter Financial Highlights**

6 For the second quarter, WageWorks reported total revenue
7 of \$119.9 million, compared to \$87.7 million for the
8 second quarter of 2016, an increase of 37 percent.
9 Healthcare revenue was \$70.0 million, compared to \$48.1
10 million for the second quarter of 2016, an increase of 46
11 percent. Commuter revenue was \$18.1 million, compared
12 to \$17.4 million for the second quarter of 2016, an increase
13 of 4 percent. COBRA revenue was \$27.7 million,
14 compared to \$17.9 million for the second quarter of 2016,
15 an increase of 55 percent. Other revenue was \$4.1 million,
16 compared to \$4.4 million for the second quarter of 2016.

17 GAAP operating income was \$13.9 million for the second
18 quarter of 2017, an increase compared to GAAP operating
19 income of \$4.6 million for the second quarter of 2016. On
20 a non-GAAP basis, second quarter of 2017 operating
21 income was \$30.8 million, an increase compared to non-
22 GAAP operating income of \$22.3 million for the second
23 quarter of 2016.

24 GAAP net income was \$19.1 million, or \$0.49 per diluted
25 share, for the second quarter of 2017, compared to GAAP
26 net income of \$2.9 million, or \$0.08 per diluted share, for
27 the second quarter of 2016.

28 On a non-GAAP basis, second quarter of 2017 net income
was \$17.7 million, or \$0.46 per diluted share, an increase
compared to non-GAAP net income of \$13.3 million, or
\$0.36 per diluted share, for the second quarter of 2016.
Non-GAAP net income for the second quarter of 2017 and
2016 excludes expenses related to stock-based
compensation, amortization of acquired intangibles,
employer paid taxes for selling stockholders, employee

1 termination and other charges, and the related tax impact
2 of these items.

3 Non-GAAP adjusted EBITDA was \$36.6 million for the
4 second quarter of 2017, an increase of 33 percent as
5 compared to non-GAAP adjusted EBITDA of \$27.5
6 million for the second quarter of 2016.

7 The reconciliation of the non-GAAP measures to the
8 comparable GAAP measures for the second quarter 2017
9 and 2016 is detailed in the tables provided in this press
10 release.

11 As of June 30, 2017, WageWorks had cash and cash
12 equivalents totaling \$774.8 million. This compares to cash
13 and cash equivalents totaling \$678.3 million as of
14 December 31, 2016. We completed a public stock offering
15 in June 2017 for proceeds of approximately \$130.8
16 million, net of underwriting discounts and commissions
17 and other costs.

18 46. Thereafter, on August 1, 2017, WageWorks filed a Form 10-Q for the
19 quarter ending June 30, 2017 (the "Q2 2017 Form 10-Q").

20 47. Following the filing of the Q2 2017 Form 10-Q, WageWorks held a
21 conference call with analysts to discuss the Company's Q2 2017 financial results.

22 48. On November 8, 2017, WageWorks issued a press release including
23 the following summary of the Company's financial results for the quarter ending
24 September 30, 2017 as well as detailed tables disclosing various financial metrics:

25 **WageWorks Reports Third Quarter 2017 Financial** 26 **Results**

- 27 • Total revenue in the third quarter 2017 of \$115.7
28 million, a 30 percent increase year-over-year
- Third quarter 2017 GAAP net income of \$9.7 million
or \$0.24 per diluted share

- Third quarter 2017 non-GAAP net income of \$18.0 million or \$0.45 per diluted shares, a 43 percent increase year-over-year
- Third quarter 2017 non-GAAP adjusted EBITDA of \$37.3 million, a 41 percent increase year-over-year

SAN MATEO, Calif., November 8, 2017 (GLOBE NEWSWIRE) -- WageWorks, Inc. (the "Company") (NYSE: WAGE), a leader in administering Consumer-Directed Benefits, today announced the Company's financial results for its third quarter ended September 30, 2017.

Executive Quotes

"We are very pleased with our strong third quarter performance which was highlighted by a healthy growth rate and impressive financial metrics" said Joe Jackson, Chairman and Chief Executive Officer of WageWorks. "We completed a successful enterprise sales season and our SMB selling season is well underway. We continue to see interest in all of our products and our comprehensive platform of integrated offerings remains a competitive differentiator for us. We recently announced the acquisition of Tango Health's HSA business and are actively working on a number of other acquisition and channel partner opportunities. We are executing on all of our growth strategies and are well positioned for continued success."

Third Quarter Financial Highlights

For the third quarter, WageWorks reported total revenue of \$115.7 million, compared to \$88.9 million for the third quarter of 2016, an increase of 30 percent. Healthcare revenue was \$66.2 million, compared to \$48.5 million for the third quarter of 2016, an increase of 37 percent. Commuter revenue was \$18.0 million, compared to \$17.6 million for the third quarter of 2016, an increase of 2 percent. COBRA revenue was \$27.5 million, compared to

1 \$18.7 million for the third quarter of 2016, an increase of
2 48 percent. Other revenue was \$4.0 million, compared to
3 \$4.2 million for the third quarter of 2016. GAAP operating
4 income was \$16.8 million for the third quarter of 2017, an
5 increase compared to GAAP operating income of \$9.4
6 million for the third quarter of 2016. On a non-GAAP
7 basis, third quarter of 2017 operating income was \$31.1
8 million, an increase compared to non-GAAP operating
9 income of \$21.2 million for the third quarter of 2016.
GAAP net income was \$9.7 million, or \$0.24 per diluted
share, for the third quarter of 2017, compared to GAAP net
income of \$5.9 million, or \$0.16 per diluted share, for the
third quarter of 2016.

10 On a non-GAAP basis, third quarter of 2017 net income
11 was \$18.0 million, or \$0.45 per diluted share, an increase
12 compared to non-GAAP net income of \$12.5 million, or
13 \$0.34 per diluted share, for the third quarter of 2016. Non-
14 GAAP net income for the third quarter of 2017 and 2016
15 excludes expenses related to stock-based compensation,
16 amortization of acquired intangibles, employee termination
and other charges, and the related tax impact of these
items.

17 Non-GAAP adjusted EBITDA was \$37.3 million for the
18 third quarter of 2017, an increase of 41 percent as
19 compared to non-GAAP adjusted EBITDA of \$26.5
million for the third quarter of 2016.

20 The reconciliation of the non-GAAP measures to the
21 comparable GAAP measures for the third quarter 2017 and
22 2016 is detailed in the tables provided in this press release.

23 As of September 30, 2017, WageWorks had cash and cash
24 equivalents totaling \$798.3 million. This compares to cash
25 and cash equivalents totaling \$678.3 million as of
26 December
31, 2016.

27 49. Thereafter, on November 8, 2017, WageWorks filed a Form 10-Q for
28 the quarter ending September 30, 2017 (the "Q3 2017 Form 10-Q").

1 50. Following the filing of the Q3 2017 Form 10-Q, WageWorks held a
2 conference call with analysts to discuss the Company's Q3 2017 financial results.

3 51. The statements above were materially false and/or misleading because
4 they misrepresented and failed to disclose the following adverse facts pertaining to
5 the Company's business, operations, and prospects, which were known to
6 Defendants or recklessly disregarded by them. Specifically, Defendants made false
7 and/or misleading statements and/or failed to disclose that: (1) the Company lacked
8 effective internal control over financial reporting; (2) the Company's financial
9 statements dating back to the beginning of 2016 failed to adequately account for
10 managing change and assessing risk in the areas of non-routine and complex
11 transactions; (3) the Company's financial statements contained errors; (4) the
12 Company's financial statements dating back to the first quarter of 2016 were not
13 reliable; and (5) as a result of the foregoing, the Company's financial statements
14 were materially false and misleading at all relevant times.

15 **THE TRUTH EMERGES**

16 52. On March 1, 2018, trading of WageWorks common stock was halted
17 at approximately 12:35 PM EST. Thereafter, WageWorks issued a press release in
18 which it announced that the Company would be unable to timely file its 2017 Form
19 10-K:

20 **WageWorks to Delay Form 10K Filing for Fiscal Year 21 2017**

22 Postpones Fourth Quarter 2017 Financial Results
23 Disclosure and Conference Call SAN MATEO, Calif.,
24 March 01, 2018 (GLOBE NEWSWIRE) -- WageWorks,
25 Inc. (NYSE: WAGE), a leader in administering Consumer-
26 Directed Benefits, today announced that it is delaying its
27 Annual Report on Form 10K for the year ended December
28 31, 2017 and its financial results and associated conference
call for the fourth quarter of 2017.

1 The Company expects to provide an update as soon as
2 practicable.

3 53. Following the announcement, the trading price of WageWorks
4 common stock fell sharply, falling from a closing price of \$52.45 per share on
5 February 28, 2018 to close at \$42.70 on March 1, 2018, a decline of almost 19% on
6 heavy volume of 4.3 million shares.

7 54. On March 2, 2018, before trading on the NYSE opened, the Company
8 filed a Form 12b-25 with the SEC in which it acknowledged its inability to file its
9 2017 Form 10-K in a timely manner, stating, in pertinent part:

10 The Company *has concluded that it has a material*
11 *weakness in its internal control over financial reporting*
12 *as of December 31, 2017 related to managing change*
13 *and assessing risk in the areas of non-routine and*
14 *complex transactions*. As a result of the material
15 weakness, the Company has concluded that its internal
16 control over *financial reporting and disclosure controls*
17 *and procedures were ineffective* as of December 31, 2017.
18 The Company is in the process of designing processes and
19 controls to address this material weakness. The Company
20 intends to disclose more detailed description of this
21 weakness, including a plan for remediating this deficiency,
22 in the 2017 Form 10-K.

23 The Audit Committee of the Company's Board of
24 Directors is conducting an independent investigation of the
25 Company's internal control over financial reporting in
26 fiscal 2016 and 2017. Among other matters, the
27 investigation consists of a *review of certain issues,*
28 *including revenue recognition, related to the accounting*
for a government contract during fiscal 2016 and
associated issues with whether there was an open flow of
information and appropriate tone at the top for an
effective control environment.

Additionally, the Audit Committee investigation of
accounting and internal control matters is ongoing and

1 may ultimately result in the identification of other
2 accounting issues, further material weaknesses, and/or
3 require the restatement of the Company's financial
statements for previous periods. [Emphasis added.]

4 55. On March 19, 2018, the Company filed a Form 8-K with the SEC and
5 stated in relevant part:

6 SAN MATEO, Calif., March 19, 2018 — WageWorks,
7 Inc. (NYSE: WAGE), a leader in administering Consumer-
8 Directed Benefits, today provided an update regarding its
9 Form 10-K for the fiscal year ended December 31, 2017
(the "Form 10-K").

10 As reported by WageWorks in its Form 12b-25 filed with
11 the Securities and Exchange Commission (the "SEC") on
12 March 2, 2018, the Company was unable to file its Form
13 10-K within the prescribed time period without
14 unreasonable effort or expense. The extension period
15 provided under Rule 12b-25 expired on March 16, 2018.
16 As disclosed in the Form 12b-25, the Company did not
expect to file the Form 10-K by the prescribed due date
allowed pursuant to Rule 12b-25.

17 The Company continues to work diligently to complete the
18 preparation of its consolidated financial statements in order
19 to be in a position to file its Annual Report on Form 10-K
for the fiscal year ended December 31, 2017 with the SEC
as soon as possible.

20 The Company also announced that, as expected, it has
21 received a notice from the New York Stock Exchange (the
22 "NYSE") indicating that the Company is not in
23 compliance with the NYSE's continued listing
24 requirements under the timely filing criteria outlined in
25 Section 802.01E of the NYSE Listed Company Manual as
26 a result of the Company's failure to timely file its Annual
Report on Form 10-K for the fiscal year ended December
31, 2017.

1 The NYSE informed the Company that, under the NYSE's
2 rules, the Company will have six months from March 16,
3 2018 to file the Form 10-K with the SEC. The Company
4 can regain compliance with the NYSE continued listing
5 requirements at any time before that date by filing the
6 Form 10-K with the SEC. If the Company fails to file the
7 Form 10-K before the NYSE's six-month compliance
8 deadline, the NYSE may grant, at its sole discretion, an
9 extension of up to six additional months for the Company
10 to regain compliance, depending on the specific
11 circumstances.

12 56. On April 5, 2018, the Company filed a Form 8-K with the SEC and
13 stated in relevant part:

14 On April 5, 2018, the Board of Directors (the "Board") of
15 WageWorks, Inc. (the "Company") concluded that the
16 Company's financial statements for (i) the quarterly and
17 year-to-date periods ended June 30 and September 30,
18 2016, (ii) the year ended December 31, 2016 and (iii) the
19 quarterly and year-to-date periods ended March 31, June
20 30 and September 30, 2017 (collectively, the "Non-
21 Reliance Periods") should be restated and should no longer
22 be relied upon. Further, the Company's disclosures related
23 to such financial statements and related communications
24 issued by or on behalf of the Company with respect to the
25 Non-Reliance Periods, including management's
26 assessment of internal control over financial reporting as of
27 December 31, 2016, should also no longer be relied upon.
28 The determination was made upon the recommendation of
the audit committee (the "Audit Committee") of the Board,
as a result of the investigation described below and after
consultation with the Company's independent auditors and
management team.

The Audit Committee has been conducting an independent
investigation of the Company's accounting practices,
financial statement reporting and internal control over
financial reporting for fiscal 2016 and 2017. As previously
announced, among other matters, the investigation has
included a review of certain issues, including revenue

1 recognition, related to the accounting for a government
2 contract during fiscal 2016 and associated issues with
3 whether there was an open flow of information and
4 appropriate tone at the top for an effective control
5 environment. The Audit Committee has engaged
6 independent professionals to assist its investigation and has
7 been working closely with the Company's independent
8 auditors throughout the process. Following the conclusion
9 of the investigation, the Company will implement
10 additional remediation measures, as appropriate, to redress
11 any material weaknesses identified by management and the
12 investigation.

13 As the Company had previously reported, the Company
14 has delayed the filing of its Annual Report on Form 10-K
15 for the period ended December 31, 2017 (the "2017 Form
16 10-K"). The Company expects to file its 2017 Form 10-K,
17 which will reflect restated results for the year-to-date
18 period ended December 31, 2016, the quarter-to-date
19 periods ended June 30 and September 30, 2016, and the
20 quarter-to-date periods ended March 31, June 30 and
21 September 30, 2017, as soon as practicable.

22 As previously disclosed in the Form 12b-25 filed on March
23 2, 2018, the Board, upon recommendation of the Audit
24 Committee, has concluded that the Company has a
25 material weakness in its internal control over financial
26 reporting as of December 31, 2017 related to managing
27 change and assessing risk in the areas of non-routine and
28 complex transactions. As a result of the material weakness,
the Board, upon recommendation of the Audit Committee,
has concluded that the Company's internal control over
financial reporting and disclosure controls and procedures
were ineffective as of December 31, 2017. The Company
is in the process of addressing this material weakness. The
Company intends to disclose a more detailed description of
this weakness, including a plan for remediating this
deficiency, in its 2017 Form 10-K. The Audit Committee
investigation of accounting and internal control matters is
ongoing and may ultimately result in the identification of
other accounting issues, further material weaknesses,

1 and/or require the restatement of other Company financial
2 statements for previous periods.

3 The Company's management and the Audit Committee
4 have discussed the matters disclosed in this Form 8-K with
5 the Company's independent registered public accounting
6 firm, KPMG LLP.

7 Item 2.02, Results of Operations and Financial Condition.

8 Expected Impact of Restatement

9 Preliminary indications from the Company's review are
10 that the necessary adjustments to the Company's financial
11 statements for fiscal year 2016 are expected to result in an
12 estimated aggregate decrease in revenue (which was
13 previously reported as \$364.7 million) in the approximate
14 range of \$6.5 million to \$9.5 million, an estimated
15 aggregate decrease in net income (which was previously
16 reported as \$20.2 million) in the approximate range of \$3.5
17 million to \$5.5 million, and an estimated aggregate
18 decrease in the non-GAAP financial measure adjusted
19 EBITDA (which was previously reported as \$108.0
20 million) in the approximate range of \$6.0 million to \$9.0
21 million. Although the Company's review of 2017 is
22 ongoing, the Company has not identified any adjustments
23 to its financial statements that would be expected to cause
24 revenue for fiscal year 2017 to differ materially from the
25 Company's previous guidance.

26 The Company has not yet completed its final
27 determination and review of the matters discussed above
28 and, therefore, the amounts described above and the
periods to which they relate are preliminary, unaudited
estimates that are subject to change. There can be no
assurance that the final amounts and adjustments will not
differ materially from the estimated amounts described
above, or that additional adjustments will not be identified,
the impact of which may be material.

1 57. On May 10, 2018, the Company filed a Form 8-K with the SEC and
2 stated in relevant part:

3 As previously disclosed, WageWorks, Inc. (the
4 “Company”) is continuing its review of its financial
5 statements and internal controls over financial reporting
6 for the fiscal year ended December 31, 2017. The
7 Company believes its previous guidance with respect to
8 the adjustments to the Company’s financial statements for
9 fiscal year 2016 is materially correct. The Company, to
10 date, has not identified any material adjustments to its
11 financial statements that would be expected to cause
revenue or adjusted EBITDA for fiscal year 2017 to differ
materially from the information disclosed on November 8,
2017.

12 The Company’s view on financial results for the fiscal year
13 ended December 31, 2017 are based upon the Company’s
14 estimates and subject to completion of its financial closing
15 procedures. The statements are not a comprehensive
16 statement of the Company’s financial results for this
17 period, and its actual results may differ materially from
18 these estimates due to the completion of financial closing
19 procedures, final adjustments, and other developments that
may arise between now and the time the Company’s
financial statements are filed with the Securities and
Exchange Commission (“SEC”).

20 Item 8.01 Other Events.

21 The restatement process includes a detailed review of the
22 Company’s accounting policies and processes. Due to the
23 high volume of transactions processed by the Company
24 and multiple platforms, the effort is extensive but the
25 Company believes the effort is manageable. The Company
26 continues to work diligently to conclude the process as
expeditiously as possible.

27 Additionally, in connection with the above, the Audit
28 Committee of the Company’s Board of Directors

1 conducted an independent investigation of the Company's
2 accounting practices, financial statement reporting and
3 internal control over financial reporting for fiscal 2016 and
4 2017. As previously disclosed, among other matters, the
5 investigation included a review of certain issues, including
6 revenue recognition, related to the accounting for a
7 government contract during fiscal 2016 and associated
8 issues with whether there was an open flow of information
9 and appropriate tone at the top for an effective control
10 environment. The Audit Committee engaged independent
11 professionals to assist its investigation throughout the
12 process. The Audit Committee has concluded its
13 investigation. Among its other findings, the Audit
14 Committee has determined that no illegal acts occurred.

11 The Company expects to report material weaknesses in its
12 internal control over financial reporting as of December
13 31, 2017 related to managing change and assessing risk in
14 the areas of non-routine and complex transactions, tone at
15 the top, and commitment to competencies in the areas of
16 non-routine and complex transactions. As a result of the
17 material weaknesses, the Board, upon recommendation of
18 the Audit Committee, concluded that the Company's
19 internal control over financial reporting and disclosure
20 controls and procedures were ineffective as of December
21 31, 2017.

19 The Company voluntarily contacted the San Francisco
20 office of the SEC regarding the restatement and
21 independent investigation and will cooperate with any
22 inquiries regarding the matter.

22 **DUTIES OF DEFENDANTS**

23 58. By reason of their positions as officers, directors, and/or fiduciaries
24 of WageWorks and because of their ability to control the business and corporate
25 affairs of WageWorks, Defendants owed the Company and its shareholders
26 fiduciary obligations of trust, loyalty, good faith and due care, and were and are
27 required to use their utmost ability to control and manage WageWorks in a fair,

1 just, honest, and equitable manner. Defendants were and are required to act in
2 furtherance of the best interests of WageWorks and its shareholders so as to
3 benefit all shareholders equally, and not in furtherance of their personal interest
4 or benefit.

5 59. Each director and officer of the Company owes to WageWorks and
6 its shareholders the fiduciary duty to exercise good faith and diligence in the
7 administration of the affairs of the Company and in the use and preservation of its
8 property and assets, as well as the highest obligations of fair dealing. In addition,
9 as officers and/or directors of a publicly held company, Defendants had a duty to
10 promptly disseminate accurate and truthful information with regard to the
11 Company's operations, finances, financial condition, and present and future
12 business prospects so that the market price of the Company's stock would be
13 based on truthful and accurate information.

14 60. Defendants, because of their positions of control and authority as
15 directors and/or officers of WageWorks, were able to and did, directly and/or
16 indirectly, exercise control over the wrongful acts complained of herein, as well
17 as the contents of the various public statements issued by the Company. Because
18 of their advisory, executive, managerial and directorial positions with
19 WageWorks, each of the Defendants had access to adverse non-public
20 information about the financial condition, operations, sales and marketing
21 practices, and improper representations of WageWorks.

22 61. To discharge their duties, the officers and directors of WageWorks
23 were required to exercise reasonable and prudent supervision over the
24 management, policies, practices, and controls of the financial affairs of the
25 Company. By virtue of such duties, the officers and directors of WageWorks
26 were required to, among other things:

1 a) ensure that the Company complied with its legal obligations
2 and requirements, including acting only within the scope of its legal authority and
3 disseminating truthful and accurate statements to the investing public;

4 b) conduct the affairs of the Company in an efficient, business-
5 like manner so as to make it possible to provide the highest quality performance
6 of its business, to avoid wasting the Company's assets, and to maximize the value
7 of the Company's stock;

8 c) properly and accurately guide investors and analysts as to the
9 true financial condition of the Company at any given time, including making
10 accurate statements about the Company's business prospects, and ensuring that
11 the Company maintained an adequate system of financial controls such that the
12 Company's financial reporting would be true and accurate at all times;

13 d) remain informed as to how WageWorks conducted its
14 operations, and, upon receipt of notice or information of imprudent or unsound
15 conditions or practices, make reasonable inquiry in connection therewith, take
16 steps to correct such conditions or practices and make such disclosures as
17 necessary to comply with federal and state securities laws; and

18 e) ensure that the Company was operated in a diligent, honest
19 and prudent manner in compliance with all applicable federal, state and local
20 laws, rules and regulations;

21 62. Each Defendant, by virtue of his position as a director and/or officer,
22 owed to the Company and to its shareholders the fiduciary duties of loyalty, good
23 faith, and the exercise of due care and diligence in the management and
24 administration of the affairs of the Company, as well as in the use and
25 preservation of its property and assets. The conduct of Defendants complained of
26 herein involves a knowing and culpable violation of their obligations as directors
27 and officers of WageWorks, the absence of good faith on their part, and a reckless
28

1 disregard for their duties to the Company and its shareholders that Defendants
2 were aware or should have been aware posed a risk of serious injury to the
3 Company.

4 63. Each director and officer of the Company owed to WageWorks the
5 fiduciary duty to exercise due care and diligence in the administration of the affairs
6 of the Company and in the use and preservation of its property and assets, and the
7 highest obligations of good faith and fair dealing. In addition, as officers and/or
8 directors of a publicly held company, Defendants had a duty not to advance their
9 own personal, financial, or economic interests over, and at the expense of, the
10 Company's public shareholders, or to allow other WageWorks directors, officers,
11 and/or employees to do so. Each director and officer of the Company also owed
12 WageWorks and its shareholder-owners the duty to maintain the Company's
13 confidential information and prevent others from misappropriating and/or trading
14 while in possession of the Company's proprietary, confidential information.

15 64. Defendants breached their duties of loyalty and good faith by causing
16 the Company to misrepresent the information as detailed *infra*. Defendants'
17 subjected the Company to the costs of defending and the potential liability from a
18 class action lawsuit for violations of the federal securities laws. As a result,
19 WageWorks has expended, and will continue to expend, significant sums of money.

20 65. Defendants' actions have irreparably damaged WageWorks's
21 corporate image and goodwill.

22 **DEMAND FUTILITY ALLEGATIONS**
23 **FOR THE BOARD OF WAGEWORKS**

24 66. Plaintiff will adequately and fairly represent the interests of
25 WageWorks and its shareholders in enforcing and prosecuting its rights.

1 67. Plaintiff brings this action derivatively in the right and for the benefit
2 of WageWorks to redress injuries suffered and to be suffered by WageWorks
3 because of the breaches of fiduciary duty by Defendants.

4 68. Because of the facts set forth herein, Plaintiff has not made a demand
5 on the Board of WageWorks to institute this action against Defendants. Such
6 demand would be a futile and useless act because the Board is incapable of making
7 an independent and disinterested decision to institute and vigorously prosecute this
8 action.

9 69. The WageWorks Board is currently comprised of Jackson,
10 Bevilacqua, Bodaken, Byerwalter, Gramaglia, Larson, Metzger and Montes. Thus,
11 Plaintiff is required to show that a majority of Defendants, *i.e.*, *four* (4), cannot
12 exercise independent objective judgment about whether to bring this action or
13 whether to vigorously prosecute this action.

14 70. Defendants face a substantial likelihood of liability in this action
15 because they caused WageWorks to issue false and misleading statements
16 concerning the information described herein. Because of their advisory, executive,
17 managerial, and directorial positions with WageWorks, Defendants had knowledge
18 of material non-public information regarding the Company and was directly
19 involved in the operations of the Company at the highest levels.

20 71. Defendants either knew or should have known of the false and
21 misleading statements that were issued on the Company's behalf and took no steps
22 in a good faith effort to prevent or remedy that situation, proximately causing
23 millions of dollars of losses for WageWorks shareholders.

24 72. Defendants (or at the very least a majority of them) cannot exercise
25 independent objective judgment about whether to bring this action or whether to
26 vigorously prosecute this action. For the reasons that follow, and for reasons
27 detailed elsewhere in this Complaint, Plaintiff has not made (and is excused from
28

1 making) a pre-filing demand on the Board to initiate this action because making a
2 demand would be a futile and useless act.

3 73. Any suit by the Board to remedy these wrongs would likely expose
4 the Company to further violations of the securities laws that would result in civil
5 actions being filed; thus, the Board members are hopelessly conflicted in making
6 any supposedly independent determination about whether to sue themselves.

7 74. Defendants approved and/or permitted the wrongs alleged herein to
8 have occurred and participated in efforts to conceal or disguise those wrongs from
9 the Company's stockholders or recklessly and/or with gross negligence disregarded
10 the wrongs complained of herein and are therefore not disinterested parties.

11 75. Defendants authorized and/or permitted the Company to make false
12 statements that disseminated directly to the public and made available and
13 distributed to shareholders, authorized and/or permitted the issuance of various
14 false and misleading statements, and are principal beneficiaries of the wrongdoing
15 alleged herein, and thus, could not fairly and fully prosecute such a suit even if they
16 instituted it.

17 **DEFENDANTS ARE NOT INDEPENDENT**

18 **Defendant Montes**

19 76. Defendant Montes is President and CEO of the Company. Defendant
20 Montes is also a Director of the Company.

21 77. Defendant Montes is not disinterested or independent, and therefore,
22 is incapable of considering demand because Monte (as CEO) is an employee of
23 the Company who derived substantially all of his income from his employment
24 with WageWorks, making him not independent. As such, Monte cannot
25 independently consider any demand to sue himself for breaching his fiduciary
26 duties to the Company, because that would expose him to liability and threaten
27 his livelihood.

78. This lack of independence and financial benefits received by Defendant Montes renders him incapable of impartially considering a demand to commence and vigorously prosecute this action.

Defendant Jackson

79. Defendant Jackson is not disinterested or independent, and therefore, is incapable of considering demand because Defendant Jackson is a named Defendant in the instant action and in the securities class actions entitled *Gov't Employees' Retirement Sys. of the Virgin Islands v. WageWorks, Inc.*, Case 4:18-cv-01523-JSW (N.D. Cal.) and *Roger Hadden v. WageWorks, Inc., et al.*, 3:18-cv-01796 (N.D. Cal.).

80. Further, in the secondary offering, Defendant Jackson took advantage of the inflation on the trading price of WageWorks common stock arising from the previously issued false and misleading financial statements. Defendant Jackson sold nearly all of his holdings in WageWorks common stock, selling 495,148 shares after exercising options to purchase more than 400,000 shares at prices between \$5.32 and \$9.59 per share and generating proceeds of \$31.3 million. Defendant Jackson's stock sales were not made pursuant to a 10b5-1 trading plan and they were dramatically out of line with past trading practices.

Defendants Metzger, Byerwalter and Bodaken

81. Defendants Metzger, Byerwalter and Bodaken are members of the Audit Committee.

82. Pursuant to the Company's Audit Committee Charter, the members of the Audit Committee are responsible for, *inter alia*, overseeing the accounting and financial reporting processes of the Company and the audits of the financial statements of the Company. Specifically, as a member of the Audit Committee, Defendants Metzger, Byerwalter and Bodaken was tasked with reviewing the

1 Company's compliance with applicable laws and regulations and reviewing and
2 overseeing any policies, procedures and programs designed to promote such
3 compliance.

4 83. Defendants Metzger, Byerwalter and Bodaken breached their
5 fiduciary duties of due care, loyalty, and good faith, because as members of the
6 Audit Committee, *inter alia*, they allowed or permitted false and misleading
7 statements to be disseminated in the Company's SEC filings and other disclosures
8 and, otherwise, failed to ensure that adequate internal controls were in place
9 regarding the serious accounting issues and deficiencies described above.
10 Therefore, Defendants Metzger, Byerwalter and Bodaken face a substantial
11 likelihood of liability for their breach of fiduciary duties and any demand upon him
12 is futile.

13 **Defendants Bevilacqua and Gramaglia**

14 84. Defendant Bevilacqua founded ArrowPath Venture Partners, an early
15 stage venture capital fund that was later spun out from E*TRADE and served as the
16 Managing Partner of that firm from 1999 to November 2007. Defendant
17 Bevilacqua served as Executive Vice President of E*TRADE Financial from
18 1997 to 2002, where he served in a variety of operational roles and established
19 E*TRADE's acquisition and investment strategies.

20 85. Defendant Gramaglia served as Partner for ArrowPath Venture
21 Partners and as President and Chief Operating Officer for E*TRADE Group, Inc.

22 86. Defendants Bevilacqua and Gramaglia (with close business ties) are
23 not disinterested or independent, and therefore, are incapable of considering
24 demand.

25 **FIRST CAUSE OF ACTION**

26

27

Against Defendants For Breach of Fiduciary Duty

87. Plaintiff incorporates by reference and re-alleges each allegation contained above, as though fully set forth herein.

88. Defendants owed and owe WageWorks fiduciary obligations. By reason of their fiduciary relationships, Defendants owed and owe WageWorks the highest obligation of good faith, fair dealing, loyalty and due care.

89. Defendants, and each of them, violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision.

90. Defendants had actual or constructive knowledge that they had caused the Company to improperly misrepresent the business prospects of the Company. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

91. As a direct and proximate result of Defendants' failure to perform their fiduciary obligations, WageWorks has sustained significant and actual damages. As a result of the misconduct alleged herein, Defendants are liable to the Company.

92. Plaintiff, on behalf of WageWorks, has no adequate remedy at law.

SECOND CAUSE OF ACTION

Against Defendants for Unjust Enrichment

93. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above, as though fully set forth herein.

94. By their wrongful acts and omissions, Defendants were unjustly enriched at the expense of and to the detriment of WageWorks in the form of salaries, bonuses, and other forms of compensation.

95. Further, in the secondary offering, Defendant Jackson took advantage of the inflation on the trading price of WageWorks common stock arising from the previously issued false and misleading financial statements.

1 Defendant Jackson sold nearly all of his holdings in WageWorks common stock,
2 selling 495,148 shares after exercising options to purchase more than 400,000
3 shares at prices between \$5.32 and \$9.59 per share and generating proceeds of
4 \$31.3 million. Defendant Jackson's stock sales were not made pursuant to a
5 10b5-1 trading plan and they were dramatically out of line with past trading
6 practices.

7 96. Plaintiff, as a shareholder and representatives of WageWorks, seeks
8 restitution from Defendants, and each of them, and seeks an order of this Court
9 disgorging all profits, benefits and other compensation obtained by these
10 Defendants, and each of them, from their wrongful conduct and fiduciary
11 breaches.

12 **THIRD CAUSE OF ACTION**

13 **(Against Defendants for Abuse of Control)**

14 97. Plaintiff incorporates by reference and re-alleges each and every
15 allegation set forth above, as though fully set forth herein.

16 98. Defendants' misconduct alleged herein constituted an abuse of their
17 ability to control and influence the Company, for which they are legally
18 responsible.

19 99. As a direct and proximate result of Defendants' abuse of control, the
20 Company has sustained significant damages. As a direct and proximate result of
21 Defendants' breaches of their fiduciary obligations of candor, good faith, and
22 loyalty, the Company has sustained and continues to sustain significant damages.

23 100. As a result of the misconduct alleged herein, Defendants are liable to
24 the Company. Plaintiff, on behalf of the Company, has no adequate remedy at
25 law.

26 **FOURTH CAUSE OF ACTION**

27 **(Against Defendants for Waste of Corporate Assets)**

1 101. Plaintiff incorporates by reference and re-alleges each and every
2 allegation set forth above, as though fully set forth herein.

3 102. As a result of the foregoing, and by failing to properly consider the
4 interests of the Company and its public shareholders, Defendants have caused the
5 Company to waste valuable corporate assets by failing to disclose (i) the Company
6 had a material weakness in its internal control over financial reporting; (ii) the
7 Company's disclosure controls and procedures were not effective; and (iii) as a
8 result of the foregoing, the Company's public statements were materially false
9 and misleading at all relevant times.

10 103. As a result of the waste of corporate assets, Defendants are each
11 liable to the Company.

12 104. Plaintiff, on behalf of the Company, has no adequate remedy at law.

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Plaintiff pray for relief and judgment as follows:

15 A. Against Defendants in favor of the Company for the amount of
16 damages sustained by the Company as a result of Defendants' breaches of
17 fiduciary duties, unjust enrichment, abuse of control, and waste of corporate
18 assets;

19 B. Awarding to Plaintiff the costs and disbursements of the action,
20 including reasonable attorney's fees, accountants' and experts' fees, costs, and
21 expenses; and

22 C. Granting such other and further relief as the Court deems just and
23 proper.

24 **JURY TRIAL DEMANDED**

25 Plaintiff hereby demands a trial by jury.

1 DATED: July 23, 2018

2 By: /s/ Jon A. Tostrud

3 Jon A. Tostrud (SBN 199502)

4 **TOSTRUD LAW GROUP, P.C.**

5 1925 Century Park East, Suite 2100

6 Los Angeles, CA 90067

7 Telephone: (310) 278-2600

8 Facsimile (310) 278-2640

9 Email: jtostrud@tostrudlaw.com

10 **GAINEY McKENNA & EGLESTON**

11 Thomas J. McKenna

12 440 Park Avenue South, 5th Floor

13 New York, NY 10016

14 Tel: (212) 983-1300

15 Fax: (212) 983-0383

16 Email: tjmckenna@gme-law.com

17 *Attorneys for Plaintiff*

VERIFICATION

I, MELVYN KLEIN, have reviewed the allegations made in this Shareholder Derivative Complaint, know the contents thereof, and authorize its filing. To those allegations of which I have personal knowledge, I believe those allegations to be true. As to those allegations of which I do not have personal knowledge, I rely upon my counsel and their investigation and believe them to be true. I further declare that I am a current holder, and have been a holder, of Wageworks, Inc. common stock at all relevant times.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 20 day of July 2018.


MELVYN KLEIN